Supreme Court, U. S.
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In the
Supreme Court of the United States.

OCTOBER TERM, 1977.

No. 77-603.

JAMES MARTORANO,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Reply Brief of Petitioner.

ALAN M. DERSHOWITZ,
20 Elmwood Avenue,
Cambridge, Massachusetts 02138.
(617) 661-1965

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS.

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The central point in the Government's brief in opposition to certiorari is its assertion that there was sufficient direct evidence from which the jury could have concluded beyond a reasonable doubt that petitioner *intended* to threaten the alleged victim with violence in the event of nonpayment.

Accordingly, the Government contends that "whatever the abstract merits of petitioner's contention," this case does not present this Court with an occasion to decide the constitutionality of 18 U.S.C. § 892(b) (Government's Brief in Opposition at p. 6).* But there is simply no evidence, direct or indirect, that the petitioner intended to threaten violence, and the Government points to none. Petitioner challenges the Government to specify the items of evidence — individually or cumulatively — from which the jury could conclude *beyond a reasonable doubt* that this was an *extortionate* loan as distinguished from a merely *usurious* loan.

The Government points to only one extremely ambiguous statement in one conversation in which the petitioner says to the alleged victim:

> Don't talk like that on the phone. . . . You can come any time, what do you think I'm gonna do something 'round my own place? Be kind of stupid wouldn't it? Ah, first chance you get drop by and see me, alright?

But surely this is not proof of any kind, certainly not beyond a reasonable doubt, that the petitioner intended to threaten violence. Even the Government appears to concede in its statement of facts that the other recorded conversations do not establish an extortionate intent on the part of the petitioner. This is how the Government characterizes the evidentiary value of the Pallotta-Pagano conversations:

* The other points addressed in the Government's brief are adequately covered in the original petition and will not be responded to here.

> The conversations between Pallotta and Pagano verified the existence of the loan (App. 119-123), revealed that Pagano and Matera had supplied petitioner with half the money involved in the loan (App. 128), and confirmed Pallotta's fear that he would be injured if he went to see petitioner at his restaurant (App. 120, 123-124, 144-145).

Nowhere is there any reference to petitioner's extortionate intent.

Petitioner respectfully invites this Court to review the lower court opinions and the record for itself. Petitioner submits that the Court will conclude that there is absolutely no direct evidence in this case that the petitioner ever intended to threaten or ever threatened the alleged victim. The only conceivable basis on which this conviction could be upheld, therefore, is by invoking the unconstitutional inference contained in 18 U.S.C. § 892(b). This case thus squarely presents that important issue. Since the vast majority of usurious loans made in the country are not extortionate, petitioner respectfully submits that a conviction for extortion cannot be based on evidence of usury. That is precisely what occurred here.

Respectfully submitted,

ALAN M. DERSHOWITZ,
20 Elmwood Avenue,
Cambridge, Massachusetts 02138.
(617) 661-1965